

## **The ProPublica Coverage of the California Redistricting Process**

There is no question the ProPublica investigative reporters found evidence that some California Democratic elected officials developed a plan to influence the redistricting process, and the reporters are to be congratulated.

However, the reporters only wrote part of the story. They only provided information that appeared to confirm that the plan actually worked. They excluded readily available information that indicated that the changes in California's electorate and demographics—not a campaign on redistricting by Democrats—determined the outcome of the vote in 2012. The reporters also omitted information that refuted claims about the ability of those involved to cause districts to be created for their advantage.

### ***Why does this issue need to be addressed?***

Because of ProPublica's reputation, the stories claiming rigged redistricting have received significant national circulation. A report in Politico<sup>1</sup> stated that Stephen Engelberg, ProPublica's managing editor, said:

“This is one of the most responded-to things we’ve done in a long time. Who knew redistricting would be so exciting?” Engelberg said. “If I had to predict a year ago what the most conversation-driving stories would be, I never would never have said redistricting.”

For all the fiery words directed at the organization over the story, Engelberg said none of the critics had taken issue with the central premise: that Democrats had plotted to sway the commissioners.

The following material does not take issue with that premise, either. In fact, not only Democrats, but also Republicans and other vested interest groups tried to sway the commissioners—as we commissioners expected. What follows demonstrates that the Commission was able to complete its constitutionally mandated responsibility without being influenced by any misinformation.<sup>2</sup> The Commission was a citizen-directed approach to redistricting that should be considered by other states.

### ***From the ProPublica Post-Election Story:***

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<sup>1</sup> : [http://www.politico.com/news/stories/1211/70908\\_Page2.html#ixzz2DXonm9ct](http://www.politico.com/news/stories/1211/70908_Page2.html#ixzz2DXonm9ct)

<sup>2</sup> See attachment 1 for the evidence that documents the extent to which the Commission met its constitutionally mandated redistricting criteria.

“Much of the attention on the elections in California had been focused on another race, between two titans in the state’s Democratic delegation, Reps. Howard Berman and Brad Sherman. The fact that they were competing in the same district [was portrayed](#) [3] as a sign that in the topsy-turvy world of redistricting, incumbents could not guarantee re-election via custom-tailored district.

“Media outlets proclaimed a *battle royale* between the two savvy politicians. But while the race did yield its moments (like a video of the two candidates in a [near-scuffle](#) [4] on stage), it may never have been that close, in part thanks to redistricting.

“Campaign finance records from [April](#) [5], [May](#) [5] and [July](#) [6] 2011— all months the redistricting commission was active -- show that Sherman employed the same Democratic consultant, Paul Mitchell, who helped engineer McNerney’s redistricting success. With an assist from redistricting maps submitted to the commission by another Mitchell client, the final district encompassed 60 percent of Sherman’s old district and only 16 percent of Berman’s.”

#### ***What was left out:***

I assume the other Paul Mitchell client referred to by ProPublica was the Valley Industry and Commerce Association (VICA). The maps they submitted for the western part of the San Fernando Valley bear little resemblance to the map eventually approved by the Commission as Congressional District 30. There were similarities between the map submitted for the Eastern part of the San Fernando Valley and the map approved by the Commission as Congressional District 29. Those similarities were based on both VICA and the Commission’s effort to meet the requirement of Section 2 of the Voting Rights Act.

The post-election report also left out that, in addition to the race that had Democratic Representatives Berman and Sherman in the same district, the same occurred to Democratic Representatives Janice Hahn and Laura Richardson. A Politico report<sup>3</sup> said:

“Representative Richardson’s congressional aides collected information about communities outside her district, organized a workshop to train constituents in advance of a public meeting of California’s independent redistricting commission, and wrote talking points for those constituents to deliver during the public-comments portion of the meeting at Long Beach City Hall in April 2011.”<sup>4</sup>

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<sup>3</sup> <http://www.politico.com/news/stories/0212/72823.html>

<sup>4</sup> To get an indication of the extent to which citizen presentations suggested that only minimal changes be made to existing districts, go to: <http://wedgesthelines.ca.gov/video-archive-april-27-2011-long-beach.html>

This allegation by Politico clearly supports ProPublica's finding that attempts were made to influence the Commission. However, the district in which Richardson eventually ran for re-election was not drawn to her advantage, and she lost. Noting that Richardson's attempt at manipulation failed would have suggested that the Commission made its decisions about districts on the merits, not based on organized testimony, but the information about Richardson was not included in the ProPublica articles. .

Attempts such as Richardson's did provide a challenge to the outreach process established by the Commission. We had organized our effort to be as welcoming and transparent as possible. If we had started putting restrictions on who could talk, we could have led some citizens to choose not to participate because they did not want to be interrogated as to their motivation. Our challenge was to hear everyone and then make decisions based on our assessment of the quality of the information presented, while taking into consideration the motivation of all the speakers who took the time to come to the meeting.

Despite the challenges, the way we drew the districts that pitted Democratic incumbents against each other provides a strong indication that we were not affected by the attempt of some Democratic elected officials to influence the Commission at public meetings.

***From the ProPublica Pre-Election Story:***

In describing the makeup of the Commission, ProPublica wrote:

"The result was a commission that included, among others, a farmer, a homemaker, a sports doctor and an architect. Previous redistricting efforts had been executed by political pros with intimate knowledge of California's sprawling political geography."

***What was left out:***

Before I get to the "others," let's look at the four who were mentioned and how they were described:

Why is there the implication that a "farmer" can't listen and implement the will of fellow citizens? In this case, the "farmer" is also a lawyer who owns a successful bookstore in Sacramento and served as a city council member. Why suggest that a "homemaker" is limited to tasks associated with the home. In this case, the very capable homemaker, before joining the Commission, was a strategic planner and organizational consultant for non-profits in the San Joaquin Valley. The architect is also an educator and a former member of a city planning commission. The sports doctor also served as an intelligence officer in the United States Air Force.

To drive home their point that the Commission was not up to the task, the reporters not only belittled the background of the four commissioners but then chose not to describe

the background and experience of the 10 others. Perhaps the reporters chose to omit the description because it would weaken their position. The commissioners who were not mentioned include: a former mayor, a city council member, a consultant to start-up enterprises, a law professor and legal scholar, a former executive director of the Earl Warren Institute at UC Berkeley's School of Law, urban planners, business owners and a former director of the United States Census Bureau.<sup>5</sup>

By design, the commissioners were not like the "political pros" who did redistricting in the past because the experience and skill set of the political pros was in creating gerrymandered districts favoring incumbents. The California electorate voted in state-wide referendums to take redistricting out of the hands of the pros and have the maps drawn by citizen representatives, no matter what their background, who had demonstrated the ability to be impartial. Elsewhere in the article, the reporters note the problems that the "pros" had created. Yet, in the context of the description of the Commission, the reporters treated the previous process as superior.

#### ***From the ProPublica Post-Election Story***

"Last year we wrote about how Democrats used front groups, disingenuous testimony, and other aggressive tactics to [manipulate California's independent redistricting commission](#) [1]. The effort was meant to create safe seats for the Democratic Party and in particular for incumbents.

"Every member of the Northern California Democratic Caucus has a ticket back to DC," said one enthusiastic memo written as the process was winding down.

#### ***What was left out:***

The memo is incorrect: 81-year-old Congressman Pete Stark, with 40 years tenure as a Congressman, did not get a "ticket back to DC." Because of the combination of redrawn districts and California's open primary, he was defeated by Eric Swalwell, a 36-year-old Democrat.

The 16 Northern California Democrats who did receive a "ticket back to DC" ran in districts that covered 23 counties with a population of 10,840,135 and a registered voter population of 5,497,549, of whom 49.39% were registered Democrats, 22.40% were registered Republicans and 28.21% were decline-to-state or registered with other parties. In this part of the state, the Republican Party was outnumbered by the Democrats and other registered voters by a factor of over 4 to 1.

Given the extremely low number of Republican registrants in these counties, for the Commission to draw a district that would have allowed a Republican candidate to have

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<sup>5</sup> A complete list of the biographies of all commissioners can be found at <http://wedrawthelines.ca.gov/bios.html>

a chance of winning, we would have had to completely ignore the California constitutionally mandated criteria related to: Voting Rights Act requirements; geographically contiguous districts; respect for county, city and community boundaries; compactness; and not favoring or discriminating against incumbent candidates or political parties.

***From the ProPublica Pre-Election Story:***

“Statewide, Democrats had been expected to gain at most a seat or two as a result of redistricting. But an internal party projection says that the Democrats will likely pick up six or seven seats in a state where the party’s voter registrations have grown only marginally. “

“Very little of this is due to demographic shifts,” said Professor Doug Johnson at the Rose Institute in Los Angeles. Republican areas actually had higher growth than Democratic ones. “By the numbers, Republicans should have held at least the same number of seats, but they lost.”

***What was left out:***

Douglas Johnson is, in fact, not a professor but a fellow at the Rose Institute and is president of National Demographics Corp., which provides redistricting consultation and services.

In addition, despite his assertion that Republicans should not have lost seats, numbers that were not included in the article show a strong trend toward increased Democratic dominance.

Between the years 2000 and 2012:

The number of California’s registered voters grew from 15,707,307 to 18,245,970, an increase of 2,538,663, or 16%.

The Democratic registration grew from 7,134,601 to 7,966,422, an increase of 831,821, or 12%. The Democratic percentage of registered voter thus fell from 45.42% in 2000 to 43.66% in 2012.

The Republican registration actually declined, from 5,485,492 in 2000 to 5,356,608 in 2012, a decrease of 128,884, or 2.35%. The change reduced the Republican percentage of registered voters from 34.92% to 29.36%.

It is true that some of California’s population growth occurred in areas where Republicans held a plurality. In the 10 counties where Republicans had their highest percentages of voters in 2000, the total registration increased from 2,669,194 in 2000 to

3,490,031 in 2012. However, the Republican percentage of all voters in those 10 counties decreased from 48.4% in 2000 to 41.85% in 2012.

***From the ProPublica Pre-Election Story:***

“The law creating the commission barred it from considering incumbents’ addresses, and instructed it not to draw districts for partisan reasons.

“The commissioners decided to go further, agreeing not to even look at data that would tell them how prospective maps affected the fortunes of Democrats or Republicans. This left the commissioners effectively blind to the sort of influence the Democrats were planning.”

***What was left out:***

The districts that were drawn were an outcome of following the constitutionally mandated criteria of seeking districts that consisted of communities of interest – not party preferences.

As was reported by the Public Policy Institute of California<sup>6</sup>; “There is little doubt that the maps produced by the CRC, and the process through which these plans came about, represented an important improvement on the legislature-led redistricting of 2001. The new district boundaries kept more communities together and created more compact districts while at the same time increasing opportunities for minority representation. If these maps survive the coming referendum and legal challenges, they have the potential to modestly increase competition in California elections and the responsiveness of the legislative branch to changing voter preferences.”<sup>7</sup>

The Public Policy Institute’s anticipated improvement in competitiveness was proven correct by Ballotpedia’s post-election report:

MADISON, Wis., Sept. 10, 2012 /PRNewswire-USNewswire/ -- Today [Ballotpedia](#) released its third annual [State Legislative Electoral Competitiveness Index](#). The index analyzes which states have the most and least competitive electoral environments in 2012. Ballotpedia's analysis found that California leads the nation with the most competitive state legislative districts and Massachusetts, Georgia and South Carolina are among the least competitive states.<sup>8</sup>

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<sup>6</sup> Public Policy Institute of California “California’s 2011 Redistricting: Challenges and Controversy,” Eric McGhee and Vladimir Kogan.

<sup>7</sup> As was reported by Huffington Post, after Eric McGhee was interviewed by Olga Pierce, he e-mailed her a copy of his report. [http://www.huffingtonpost.com/phil-trounstine/why-the-propublica-remap-\\_b\\_1168216.html](http://www.huffingtonpost.com/phil-trounstine/why-the-propublica-remap-_b_1168216.html)

<sup>8</sup> <http://www.prnewswire.com/news-releases/california-leads-nation-with-most-competitive-elections-massachusetts-finishes-last-169163516.html>

The California 2012 competitive index was 57.2 compared with the 2010 index (based on the earlier redistricting) of 46.6.

***From the ProPublica Pre-Election Story:***

“The commission moved its meetings to Sacramento, not far from where party bosses had once gathered in secret to set the lines. The commission’s meetings were webcast to the public. But only those with the resources and time could participate.”

***What was left out:***

None of these meetings were held in secret. Most of these public line drawing meetings were held at the University of the Pacific, McGeorge School of Law. During the meetings, in addition to significant participation from those in attendance,<sup>9</sup> many people emailed, and the commissioners read and referred to the emails in real time. The Commission also drew on the thousands of other e-mails, faxes and letters offering comment on the districts.

The video of the meetings is archived on our website, and it is easy to see both how many people—not just Democrats—tried to influence us and how open and interactive the meetings were.

***From the ProPublica Post-Election Story***

“So how did congressional Democrats do in California after redistricting shook everything up? Quite well.

“Of 34 Democratic incumbents, only three lost their races, all three to other Democrats. Overall, Democrats in California gained four seats. (One race is close and may result in a recount.)”

***What was left out:***

As I mentioned earlier, the Republican percentage of the California electorate has dropped six percentage points, while the Democratic percentage has fallen just one percentage point. In addition, there have been significant increases in the Hispanic and Asian-American population. Many observers familiar with the California political process say the change in party registration and the increase in the Hispanic and Asian population contributed to the loss of the Republican-held congressional seats.

Michael Blood wrote in an Associated Press report<sup>10</sup> on November 10, 2012.

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<sup>9</sup> To get a sense of the level and intensity of participation, view the June 7 to June 10 videos found at <http://weDRAWthelines.ca.gov/viewer.html>

<sup>10</sup> <http://www.azcentral.com/news/politics/free/20121110california-political-trends-worry-republicans.html>

If the future happens first in California, the Republican Party has a problem.

The nation's most populous state — home to 1 in 8 Americans — has entered a period of Democratic political control so far-reaching that the dwindling number of Republicans in the Legislature are in danger of becoming mere spectators at the statehouse.

Democrats hold the governorship and every other statewide office. They gained even more ground in Tuesday's elections, picking up at least three congressional seats while votes continue to be counted in two other tight races — in one upset, Democrat Raul Ruiz, a Harvard-educated physician who mobilized a district's growing swath of Hispanic voters, pushed out longtime Republican Rep. Mary Bono Mack.

...There is no better place to witness how demographic shifts have shaped elections than in California, the home turf of Richard Nixon and Ronald Reagan that just a generation ago was a reliably Republican state in presidential contests.

A surge in immigrants transformed the state, and its voting patterns. The number of Hispanics, blacks and Asians combined has outnumbered whites since 1998 in California, and by 2020 the Hispanic population alone is expected to top that of whites. With Latinos, for example, voter surveys show they've overwhelmingly favored Democratic presidential candidates for decades. Similar shifts are taking place across the nation.

...Perhaps no part of the state better illustrates how Republicans surrendered ground than in Orange County, once a largely white, GOP bastion where Nixon's seaside home became known as the Western White House.

Today, whites make up a little more than 40 percent of the population, while 2 in 10 residents are Asian and about 1 in 3 is Hispanic, according to the census.

In 1980, Jimmy Carter managed to collect about a quarter of the vote against Reagan in the county. But by 1996, with the county diversifying, Bill Clinton grabbed 38 percent of the vote, and Al Gore boosted that to 40 percent in 2000. This year, Obama won 44 percent of the vote in Orange County, according to preliminary returns.

On November 16, 2012, Wyatt Buchanan, a San Francisco Chronicle columnist, reported:<sup>11</sup>

**About that election:** There's plenty of navel gazing around Sacramento about the forces that drove the outcomes of candidate races and ballot measures in California, and two of the state's top pollsters gave a noontime crowd plenty to chew on this week.

This election was a "turning point" in terms of minority voters flexing their political muscle, according to [Mark DiCamillo](#), director of Field Poll. He said a full 40 percent of the electorate was made up of Latino, Asian American and African American voters.

"We've never had a turnout of ethnic voters of that size before," DiCamillo told a luncheon crowd at the [Sacramento Press Club](#). He said President [Obama's](#) wide margin of victory and the passage of Gov. [Jerry Brown's](#) [Proposition 30](#) both are attributable to these voters.

#### ***How others have reacted to the Commission's efforts:***

The judicial system responded to criticisms when political organizations attempted to have the California Redistricting Commission's congressional and legislative maps overturned. In the four legal cases, the courts and the U.S. Department of Justice all supported the maps drawn by the Commission.

In a final act of approval, 72% of the California electorate voted in 2012 to confirm the Commission's Senate district maps.

#### ***ProPublica needs to tell the whole story, not just parts of it.***

ProPublica has an obligation to repair the portrayal that, because of its reporters' omissions, incorrectly said that the California Citizen Redistricting Commission did not correctly and honestly perform its responsibilities.

#### **ATTACHMENT 1**

Here are the 7 criteria in their order of priority and the manner in which the Commission met them<sup>12</sup>:

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<sup>11</sup> <http://www.sfgate.com/bayarea/capitolnotebook/article/GOP-must-act-now-Latino-strategist-says-4045529.php#ixzz2DjiNyGOE>

<sup>12</sup> It should be noted that, at times, to satisfy some of the criteria resulted in conflicts with the other criteria. In those instances the Commission placed greater weight on the criteria with the highest priority. For example, if

**1. Districts must be of equal population to comply with the U.S. Constitution.**

53 Congressional Districts Ideal Population Count 702,905

20 achieved ideal population of 702,905

12 achieved population count of 702,906

21 achieved population count of 702, 904

80 Assembly Districts Ideal Population Count 465,674

Average deviation from ideal for all districts was within .506%.

40 Senate Districts Ideal Population Count 931,349

Average deviation from ideal for all districts was within .449%.

4 Board of Equalization Districts Ideal Population Count 9,313,489

Average deviation from ideal for all districts was within .630%.

**2. Districts must comply with the Voting Rights Act to ensure that minorities have an equal opportunity to elect representatives of their choice.**

U.S. Department of Justice Civil Rights Division stated:

“This refers to the 2011 redistricting plans for the California congressional delegation, Senate, Assembly and Board of Equalization for the State of California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965m 42 U.S. C. 1973c. We received your submission on November 16, 2011; additional information was received through December 30, 2011.”

The Attorney General does not interpose any objection to the specified changes.

**3. Districts must be contiguous so that all parts of the district are connected to each other.**

All the Commissions districts are geographically contiguous<sup>13</sup> and comply with the Voters First Act.

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achieving population equality (the first priority) required the splitting of a town (the fourth priority) we would split the town.

<sup>13</sup> Except for islands and peninsulas. Where bridges were nearby, those areas were connected to the closest land mass. Ferry boat lanes were also taken into consideration.

**4. Districts must respect the boundaries of cities, counties, neighborhoods and communities of interest, and minimize their division, to the extent possible.**

DISTRICT TYPE	COUNTY SPLITS (58 COUNTIES)	CITY SPLITS (480 CITIES)
ASSEMBLY	10	35
SENATE	11	20
BOARD OF EQUALIZATION	1	2
CONGRESSIONAL	11	41

Splits were only recorded for cities that were smaller than the district in which they were located.

**5. Districts should be geographically compact, that is, have a fairly regular shape.**

“The commission was required to respect certain geographic criteria whenever possible: to draw compact districts with simple shapes; to avoid splitting cities, counties, and communities of interest among multiple districts; and to nest two Assembly districts exactly within each Senate district. The commission’s new maps improve compactness significantly, and improve city splits and nesting modestly. “

Public Policy Institute of California  
 California's 2011 Redistricting: Challenges and Controversy  
 Eric McGhee and Vladimir Kogan

**6. Where practicable each Senate District should be comprised of two complete and adjacent Assembly Districts and Board of Equalization districts shall be composed of 10 complete and adjacent State Senate Districts.**

Percent of Senate Districts Nested	100%	90-99.9%	80-89.9%	70-79.9%	65-69.9%
Number of Districts	3	9	10	15	3

**7. Districts shall not be drawn to favor or discriminate against an incumbent, candidate, or political party.**

“There is little doubt that the maps produced by the CRC, and the process through which these plans came about, represented an important improvement on the legislature-led redistricting of 2001. The new district boundaries kept more communities together and created more compact districts while at the same time increasing opportunities for minority representation. If these maps survive the

coming referendum and legal challenges, they have the potential to modestly increase competition in California elections and the responsiveness of the legislative branch to changing voter preferences.”

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